

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

GREGORY LEE,

Plaintiff,

-against-

**DET. ENRIQUE CORNEIL#1787,
SGT. JIMMY FREYRE#2218, ADA BUZA,
NYPD OFFICERS, et al.**

Defendants.

-----X

PLAINTIFF'S SECOND

AMENDMENT TO

COMPLAINT AS OF COURSE

[F.R.C.P. Rule 15(a)(1)]

13 Civ. 8359 (ALC)(DCF)

Plaintiff, Gregory Lee, in accordance with Rule 15(a), Federal Rules of Civil Procedure, amends the complaint in this action to read as follows:

I, Gregory Lee, (hereinafter "Plaintiff") am the plaintiff in the above entitled action, and respectfully submit this second amended complaint dated April 27, 2015, pursuant to Federal Rules of Civil Procedure Rule 15(a)(1).

Plaintiff alleges:

Introduction

1. This is an action pursuant to the Civil Rights Act of 1871, 42 U.S.C. Sec. 1983, and 28 U.S.C. Sec. 1343, seeking redress for the deprivation of the Plaintiff's constitutional rights. Venue is proper in this District, as all of the acts complained of occurred in New York County.

Jurisdiction

2. This Court has jurisdiction over this action under 28 U.S.C. Sec. 1343(a)(3) for a violation of constitutional rights as provided in 42 U.S.C. Sec. 1983. The Plaintiff seeks injunctive relief, punitive damages and monetary damages as well as attorney fees and costs , if required, pursuant to 42 U.S.C.A. Sec. 1988.

3. The Plaintiff seeks redress for violations of the Plaintiff's right pursuant to the Fourth Amendment of the Constitution of the United States to be free from illegal seizures; the Plaintiff's right to be free from police harassment and intimidation as provided for in the Fifth and Sixth Amendments of the Constitution of the United States; the Plaintiff's right to be free from malicious prosecution, malicious abuse of process, and unlawful seizure as provided for by the Fourth and Fourteenth Amendments of the Constitution of the United States.

4. Plaintiff brings these claims against defendants ADA John Buza, an Assistant District Attorney in New York County as an officer of the court acting under color of law when defendant made these decisions in his official capacity, as an Assistant District Attorney in New York County (hereinafter "DANY") under the auspice of state law, "DANY" Regulations, Customs and policies, or his own whim. ADA John Buza, an Assistant District Attorney in New York County, Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, members of the NYPD, et al. all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, by suggesting the unduly suggestive identification procedures in intentional or reckless disregard for Plaintiff's constitutional right to be free from malicious prosecution, malicious abuse of process and for his right to not be deprived of liberty without due process of law in violation of section 1983 of title 42 of the United States Code.

5. The Plaintiff has personal knowledge of facts which bear on this motion because the Plaintiff was made to suffer the indignities of the unduly suggestive line-ups, false arrest, illegal seizure, unlawful imprisonment, malicious prosecution and abuse of process that the defendants did cause.

Identity of the Parties

6. The Plaintiff, Mr. Gregory Lee is an adult individual residing at Cape Vincent Correctional Facility, Cape Vincent, New York 13618.

7. The defendants Det. Enrique Corneil #1787, Sgt. Jimmy Freyre #2218 were at all times relevant to the allegations contained in this complaint employed as duly appointed police officers with the New York Police Department. Defendant ADA John Buza at all times relevant to the allegations contained in this complaint was employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office.

8. At all times relevant to the allegations, Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218 employed as members of the New York Police Department acted under color of state law, regulations, customs, and policies, or their own whims. Defendant ADA John Buza, was employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, at all times relevant to the allegations, acted under color of State Law, regulations, customs, and policies, or his own whim.

Facts

9. On June 19, 2012 at approximately 9:10 am, Plaintiff went to his regularly scheduled parole visit with his Parole Officer Ms. C. Sutherland at 314 West 40th St., New York, New York. After speaking with Ms. C. Sutherland briefly Plaintiff was told to place his hands behind

his back and he was handcuffed, at the request of Det. Corneil, by the Parole Officer and her Supervisor. Plaintiff was then confronted by N.Y.P.D. Detective Enrique Corneil of the Manhattan Robbery Squad. Det. Corneil stated that Plaintiff was a suspect in a crime that was committed some days earlier on the subway system, and that he wished to interrogate him.

10. Plaintiff explained that he had done nothing wrong to both Det. Enrique Corneil and his Parole Officer Ms. C. Sutherland. Plaintiff went on to say that if the detective wanted to speak with him he could do so in the presence of his parole officer. Det. Enrique Corneil then insisted that Plaintiff be brought to the Manhattan Robbery Squad located on East 12th St., New York. Plaintiff did not consent to go to the Manhattan Robbery Squad with Det. Corneil.

11. Claim one against defendants ADA John Buza, employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, employed as members of the NYPD, et al., all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, for assisting in and conducting unduly suggestive identification procedures in intentional or reckless disregard for Plaintiff's constitutional rights as guaranteed under the Sixth Amendment of the U.S. Constitution and Article 1 § 6 of the New York State Constitution.

12. Claim two against defendants Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, members of the NYPD, et al., and ADA Buza all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, for deliberately suppressing exculpatory evidence, which the defendants knew existed prior to the arrest, in violation of 42 U.S.C.A. § 1983. (see, *Brady v. Maryland*, 373 U.S. 83)

13. Claim three against defendants ADA John Buza, employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, members of the NYPD, et al. all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, for abuse of process by pursuing criminal charges against the Plaintiff without proof to substantiate the charges, in violation of Plaintiff's rights under the New York State Constitution Article 1 §§ 6, 12; and the U.S. Constitutional Amendments 4, 6, and 14.

14. Claim four against defendants ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, members of the NYPD, et al. all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, for false arrest and malicious prosecution for the arrest of the Plaintiff after the two line ups conducted on June 19, 2012 @ 3:30pm and again at 5:10pm, in violation of Plaintiff's rights under the New York State Constitution Article 1 §§ 6, 12; and the U.S. Constitutional Amendments 4, 6, and 14.

15. Claim five against defendants ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, employed as members of the NYPD, et al., and all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, for illegal detention of the Plaintiff after Plaintiff stated that he did not wish to go to the Manhattan Robbery Squad, and the subsequent illegal detention on Rikers Island for six (6) days, in violation of Plaintiff's rights under the New York State Constitution Article 1 §§ 6, 12; and the U.S. Constitutional Amendments 4, 6, and 14.

16. At approximately 11:00am on June 19, 2012 Det. Enrique Corneil #1787 accompanied by another officer transported the Plaintiff, handcuffed, to the Manhattan Robbery Squad Precinct. Plaintiff explained to the detective that he was exercising his right to remain silent. Det. Corneil then stated that he had some proof that the Plaintiff and another individual has committed some crimes on the subway system and that he would be placed in a line up whether he wanted to or not. Plaintiff was being held on no more than the speculations of Sgt. Freyre as it was testified to by Sgt. Freyre at a suppression hearing on an unrelated charge. Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, employed as members of the NYPD, et al., and all acting under color of state law, did violate Plaintiff's right against self-incrimination by attempting to use his past as the sole basis for his detention. (see, Hearing Testimony, marked Exhibit "A")

17. At approximately 3:30pm and again at 5:10pm on June 19, 2012 Plaintiff was placed in two separate line-ups that were conducted by Det. Enrique Corneil #1787. Both of those line-ups were comprised of mostly undercover officers from the Manhattan Robbery Squad Precinct. Plaintiff was not selected in either line-up. Det. Enrique Corneil #1787 did not release the Plaintiff or his co-defendant after the results of those line ups proved negative. At that time the Plaintiff and his co-defendant were being held on no more than the speculations of Sgt. Freyre #2218 as he based his arrest on his incomplete investigation. At that point the defendants Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, employed as members of the NYPD, et al., and ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, did illegally detain the Plaintiff in violation of Plaintiff's rights under the New York State Constitution Article 1 §§ 6, 12; and the U.S. Constitutional Amendments 4, 6, and 14.

18. At approximately 6:00pm Det. Enrique Corneil #1787 stated to Plaintiff, and his co-defendant Walter Young, that he was going to be placed under arrest for two (2) separate robberies. Plaintiff then asked Det. Enrique Corneil, "if the line-ups proved negative then why would he still be incarcerated for nothing?" Det. Enrique Corneil indicated that it was not his call and that he was only following orders. At that time it was ADA Buza who suggested the further detention of the Plaintiff in violation of his Fourth Amendment rights. (see, *Dunaway v. New York*, 442 U.S. 200; also see, *Alla v. Verkay*, 2013WL5815796).

19. On June 20, 2012 Plaintiff was transported to the Manhattan Criminal Courts, 100 Centre St., New York, New York, where he was formally charged with Grand Larceny 4^o and arraigned. Plaintiff was assigned an attorney from the New York County 18B Plan, Attorney Kira Treyvus. Plaintiff informed the attorney that he wished to testify before the grand jury, and he requested that attorney to serve cross-notification. Bail was set at \$25,000. by Hon. Abraham Clott, Part "F". Plaintiff did make it clear to his attorney that he was not selected in two line ups that were conducted by the police on June 19, 2012. Defendants ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, Det. Enrique Corneil #1787 and Sgt. Jimmy Freyre #2218, employed as members of the NYPD, did violate Plaintiff's Fourth and Fourteenth Amendment rights as provided for by the Constitution of the United States, i.e. his right to be free from malicious prosecution, malicious abuse of process, and unlawful seizure and those rights to due process. (see, Criminal Complaint marked Exhibit "B" & N.Y. County Felony Complaint, Dkt. #2012NY048053 Marked Exhibit "C").

20. On June 25, 2012 Plaintiff was scheduled to appear before the grand jury to testify on his own behalf at New York Criminal Court, 100 Centre St, but was advised by his Attorney Ms. Kira Treyvus that ADA Buza was requesting more time to investigate. Plaintiff stated to his

Attorney Ms. Kira Treyvus that he had been incarcerated for six (6) days for some crime that he did not commit. He went on to say that he was going to inform the Grand Jury that he had been placed in two (2) line ups and that the results of those line ups should be considered Brady material since it did tend to exonerate him of any wrongdoing. Det. Enrique Corneil, Sgt. Jimmy Freyre employed as members of the NYPD, and ADA John Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, all acting under color of state law, did violate Plaintiff's Fourth and Fourteenth Amendment Rights under Brady v. Maryland, 373 U.S. 83. A Brady violation is established when, "(1) the government, either willfully or inadvertently, suppressed evidence; (2) the evidence at issue is favorable to the defendant; (3) the failure to disclose this evidence resulted in prejudice." Plaintiff was incarcerated for some six (6) days unnecessarily when Det. Enrique Corneil, Sgt. Jimmy Freyre and ADA John Buza all knew beforehand that this material existed. ADA Buza was fully aware of the actions of the NYPD Officers as he did support their actions. When a district attorney functions outside of his or her role as an advocate for the People, as ADA Buza did, the shield of immunity is absent; immunity does not protect those acts a prosecutor performs in administration or investigation not undertaken in the preparation for judicial proceedings. (see, Carjabal v. County of Nassau, 271 F.Supp.2d 415; "When a prosecutor supervises, conducts, or assists in the investigation of a crime, or gives advice as to the existence of probable cause to make a warrantless arrest – that is, when he performs functions normally associated with a police investigation – he loses his absolute protection from liability.")

21. Plaintiff was incarcerated as a result of the actions of ADA Buza, Det. Enrique Corneil and Sgt. Jimmy Freyre, from June 19, 2012 to June 25, 2012 in spite of the fact that there was no evidence that he had committed any crimes. ADA Buza, employed as a duly appointed Assistant

District Attorney with the New York County District Attorney's Office, Det. Enrique Corneil and Sgt. Jimmy Freyre, employed as members of the NYPD, all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, did illegally detain and maliciously prosecute the Plaintiff in violation of his rights as guaranteed under U.S. Constitutional Amendments 4, 5, 6, and 14. (please see, *Dunaway v. New York*, 442 U.S. 200; also see, *Collins v. New York* (E.D.N.Y. 2013) No. 11-CV-766 FB RML, February 15, 2013; "the security of one's privacy against arbitrary intrusion by the police – which is at the core of the Fourth Amendment – is basic to a free society. It is therefore implicit in the concept of ordered liberty and as such enforceable against the States through the Due Process Clause of the Fourteenth Amendment").

22. Plaintiff was released from custody on June 25, 2012 on ROR by the Courts and given a subpoena to return to Court some three (3) months later. Subsequently the case against Plaintiff was dismissed on December 18, 2012 and Plaintiff is now seeking damages. Plaintiff avers that Parole Officer Ms. C. Sutherland was not a part of that group that chose to prosecute him and she should not be considered as a party to this action.

23. Plaintiff now asserts that a state prosecuting attorney who acts within the scope of his or her duties in initiating and pursuing criminal prosecution and in presenting state's case is absolutely immune from suit for damages under 42 U.S.C.A. § 1983...but such government actors are not immune for actions that are *primarily investigative* or administrative in nature; to distinguish between the two types of actions, a court looks to whether the actions can rightly be considered advocacy because it is the prosecutor's main function and the one most akin to his or her quasi-judicial role. For instance, absolute prosecutorial immunity does not apply when a *prosecutor gives advice to police during a criminal investigation*, or when a prosecutor acts as a

complaining witness in support of a warrant application. (see, *Michaels v. New Jersey*, 50 F.Supp.2d 353) In Plaintiff's case ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, did advise Det. Corneil, after the line-ups proved negative, to further detain the Plaintiff and put together a photographic line-up. (see, Photo-array line-up Def. 66 marked Exhibit "D" & Complaint Follow-up Report Def. 41 Marked Exhibit "E").

24. Plaintiff avers that ADA Buza made the decision to further detain Plaintiff in spite of the results of the line-ups that were conducted earlier that day. (see, Complaint Follow-up Report Def. 45 Marked Exhibit "F") Plaintiff asserts that at the behest of ADA Buza two additional line-ups were allegedly performed after the earlier line-ups on June 19, 2012. At 2148 hrs. Det. Corneil did prepare a photo array, at the behest of ADA Buza. This was done in violation of the Plaintiff's constitutional rights that are guaranteed under the Fourth and Fourteenth Amendments. These line-ups were unduly suggestive as Det. Enrique Corneil went to the alleged "c/v" apartment at 2225 hrs. no more than five (5) hours after the "c/v" had observed the Plaintiff in two earlier line-ups. Subsequently, this same alleged "c/v" supposedly picked the plaintiff out of a show-up line-up the very next day, which Plaintiff asserts did not happen. A show-up identification will be inadmissible when "there was no effort to make the least provision for a reliable identification and the combined result of the procedures employed" establish that the show-up was unduly suggestive. (see, *U.S. v. Morgan*, 690 F.Supp.2d 274 ; *People v. Adams*, 440 N.Y.S.2d 902) (*Please note that Def. 47 states that c/v was not able to identify suspect from photo array*) (see, Complaint Follow-up Report Def. 47 & 51 marked Exhibits "G" & "H")

25. Plaintiff avers that in spite of the "c/v's" inability to select him on June 19, 2012, ADA Buza employed as a duly appointed Assistant District Attorney with the New York County

District Attorney's Office, did instruct Det. Corneil to detain and transport Plaintiff from Manhattan Central Booking back to Manhattan Robbery Squad on June 20, 2012. Plaintiff now asserts that his further detention was malicious since there was only one alleged "c/v" and 3 to 4 line-ups that were conducted that included the Plaintiff as the only person who appeared in all of them. Plaintiff avers that a procedure which is conducted in an impermissibly suggestive manner must be invalidated even if that identification is justified by the requisite exigencies. (see, *United States v. Wade*, 388 U.S. 218; also see, *People v. Riley*, 522 N.Y.S.2d 842 ; *People v. Ortiz*, 664 N.Y.S.2d 243) Plaintiff asserts that the actions of ADA Buza, employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, Det. Enrique Corneil, and Sgt. Jimmy Freyre, members of the NYPD, all acting under color of state law, became malicious once the defendants realized that the plaintiff could be innocent as they had no probable cause to detain him. Malicious prosecution is defined as (1) the initiation or continuation of a criminal proceeding against plaintiff; (2) termination of the proceeding in plaintiff's favor; (3) lack of probable cause for commencing the proceeding; and (4) actual malice as a motive for defendant's actions." (see, Prisoner Transport Sheet marked Exhibit "I").

26. Plaintiff now asserts that while a prosecutor does not have an obligation to investigate a case to obtain exculpatory evidence, the N.Y. Court of Appeals has held that an "individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." (see, *Youngblood v. West Virginia*, 547 U.S. 867; also see, *People v. Wright*, 86 N.Y.2d 591). Plaintiff avers that a prosecutor may not claim exemption from its Brady obligation on the grounds of inaccessibility when the agency in possession of the documents or information is a law enforcement agency within the State working on the very same investigation.

27. Plaintiff avers that under New York Law, defenses are either exculpatory (eliminating culpability) or mitigating (reducing culpability). Plaintiff asserts that in this case ADA Buza, who had prior knowledge of the results of the two (2) line-ups conducted earlier that day, on June 19, 2012, was aware of the fact that they were exculpatory in nature. Plaintiff asserts that Det. Enrique Corneil, Sgt. Jimmy Freyre and ADA Buza all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, by ignoring those facts and persisting in going forward with the prosecution, even though there was a reasonable doubt. (see, *Brady v. Maryland*, 373 U.S. 83).

28. On June 25, 2012 Plaintiff was scheduled to appear before the grand jury to testify on his own behalf at New York Criminal Court, 100 Centre St, but was advised by his Attorney Ms. Kira Treyvus that ADA Buza was requesting more time to investigate. ADA Buza was fully aware of the actions of the NYPD Officers as he did support their actions. When a district attorney functions outside of his or her role as an advocate for the People, as ADA Buza did, the shield of immunity is absent; immunity does not protect those acts a prosecutor performs in administration or investigation not undertaken in the preparation for judicial proceedings. (see, *Carjabal v. County of Nassau*, 271 F.Supp.2d 415; “When a prosecutor supervises, conducts, or assists in the investigation of a crime, or gives advice as to the existence of probable cause to make a warrantless arrest – that is, when he performs functions normally associated with a police investigation – he loses his absolute protection from liability.”)

29. Plaintiff submits that he was detained for six (6) days after arraignment on the aforementioned criminal complaint, from June 19, 2012 to June 25, 2012, and that ADA Buza was instrumental in that incarceration as Det. Enrique Corneil, Sgt. Jimmy Freyre employed as members of the NYPD and ADA Buza employed as a duly appointed Assistant District Attorney

with the New York County District Attorney's Office, all acting under color of state law, were all fully aware of the investigation, circumstances surrounding the arrest and further detention of the Plaintiff. (see, *Provost v. City of Newburg*, 262 F.3d 146) Plaintiff now avers that when accused is physically detained following arraignment, there can be no question that he has been seized within the meaning of the Fourth Amendment. Plaintiff now submits to this Court that the criminal charges in this case were subsequently dismissed in his favor pursuant to Criminal Procedure Law § 160.50 Order Upon Termination of Criminal Action in Favor of the Accused. And that the New York legislature, in enacting C.P. L. § 160.50, felt that "No individual should suffer adverse consequences merely on the basis of an accusation, unless the charges were ultimately sustained in a court of law." (see , Exhibits "J-K")

30. Plaintiff now asserts that the Supremacy Clause of the Federal Constitution (Article 6 clause 2) prevents state from immunizing entities or individuals alleged to have violated Federal law whether suit to redress federal suits is brought in State or Federal Courts. Plaintiff avers that any opposing motion should be denied because absolute immunity does not apply when a prosecutor gives advice to police during a criminal investigation, or as a complaining witness in support of a warrant application.

31. Plaintiff avers that absolute prosecutorial immunity may not apply in a § 1983 action when a *prosecutor is not acting as an officer of the court*, but is engaged in other tasks, such as investigative or administrative tasks. (see, *Van de Kamp v. Goldstein*, 555 U.S. 335) Plaintiff now asserts that ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney's Office, acted under color of law when he ordered the further detention of the Plaintiff, and that an official acts under color of state law for § 1983 purposes when the official exercises a power possessed by virtue of state law made possible only

because the wrongdoer is cloaked with the authority of state law. (see, 42 U.S.C.A. § 1983) Plaintiff also asserts that while direct participation” requires intentional participation in the conduct constituting a violation of the victim’s rights by one who knew of the facts rendering it illegal,” this requirement does not foreclose the liability of a person who, with knowledge of the illegality, participates in bringing about a violation of the victim’s rights but does so in a manner that might be said to be ‘indirect’—such as ordering or helping others to do the unlawful acts, rather than doing them himself. (see, *Provost v. City of Newburg*, 262 F.3d 146).

32. Plaintiff avers that a prosecutor may not shield his investigative work with the aegis of absolute immunity merely because, after a suspect is eventually arrested, indicted, and tried, that work may be retrospectively described as “preparation” for possible trial; every prosecutor might then shield himself from liability for any constitutional wrong against innocent citizens by ensuring that they go to trial. (see, *Fields v. Wharrie*, 740 F.3d 1107).

33. In determining whether a prosecutor enjoys absolute immunity against any particular claim for damages, the courts are to apply a “functional approach,” by examining “the nature of the function performed, not the identity of the actor who performed it.” (see, *Buckley v. Fitzsimmons*, 509 U.S. 259) thus, the actions of a prosecutor are not absolutely immune merely because they are performed by a prosecutor.” The ultimate “question ... is whether the prosecutors have carried their burden of establishing that they were functioning as ‘advocate’ when they” engaged in the challenged conduct. (*Buckley*) If the challenged conduct either is not a traditional function of a prosecutor, or is not part of his adversarial function, (see, *Burn v. Reed*, 500 U.S. 478) (for example, advising police on permissibility of investigatory method), the prosecutor is not entitled to absolute immunity.

34. Plaintiff avers that for a statutory right or a constitutional right to be “clearly established,” so that a government official lacks qualified immunity from civil damages liability for violating that right, because that right was clearly established at the time of the challenged conduct, the right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right; in other words, existing precedent must have placed the statutory or constitutional question beyond debate.

35. Plaintiff asserts that defendants Det. Enrique Corneil, Sgt. Jimmy Freyre employed as members of the NYPD and ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney’s Office, all acting under color of state law, conspired to deprive Plaintiff and did, in fact, deprive Plaintiff of rights protected by the Constitution, as they violated clearly established U.S. Constitutional and Statutory rights under the New York State Constitution Articles 1 §§ 6, 12; and the U.S. Constitutional Amendments 4, 6, and 14. Plaintiff did not consent to questioning, arrest or seizure of his person in violation of his rights under the New York State Constitution Articles 1 §§ 6, 12; and the U.S. Constitutional Amendments 4, 6, and 14. (see, *Washington v. Glucksburg*, 117 S.Ct. 2258; clearly established rights, actions shocking the conscious of the plaintiff).

36. The actions of defendants ADA Buza employed as a duly appointed Assistant District Attorney with the New York County District Attorney’s Office, Det. Enrique Corneil and Sgt. Jimmy Freyre employed as members of the NYPD, all acting under color of state law, constituted a deprivation of the plaintiff’s Constitutional rights as provided under the U.S. Constitution to be free (a) from illegal seizures; (b) plaintiff’s right to be free from police harassment and intimidation as provided for in the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution; (c) plaintiff’s Sixth Amendment right to access of the courts; (d)

Plaintiff's right to be free from malicious prosecution, abuse of process; and (e) Plaintiff's right to Due Process as guaranteed under the Fourth and Fourteenth Amendments of the U.S. Constitution. (please see, Exhibits "A to K").


37. The acts of the defendants ADA John Buza, Det. Enrique Corneil and Sgt. Jimmy Freyre were done in bad faith, and maliciously with the intent to deprive Plaintiff of U.S. Constitutionally protected rights as guaranteed under the Fourth and Fourteenth Amendments of the U.S. Constitution, and New York State Constitution Article 1 §§ 6, 12 and such acts warrant the imposition of injunctive relief, in the form of assurances by the Court that the defendants will not retaliate against the Plaintiff for his claim, and punitive damages.

WHEREFORE, Plaintiff demands judgment against the defendants ADA John Buza, Det.

Enrique Corneil and Sgt. Jimmy Freyre in the amount of \$1,000,000.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Cape Vincent, NY
April 27, 2015


Mr. Gregory Lee, Pro Se
Cape Vincent Corr. Facility
Route 12E, P.O. Box 739
Cape Vincent, NY 13618

Sworn To Before Me on
This 27 day of April, 2015


NOTARY PUBLIC

BARBARA M. COTTER
Notary Public, State of New York
Qualified in Jefferson County
01CO6168168
Commission Expires on June 11, 2015

U.S. District Court
Pro -Se Clerk
Southern District of New York
U.S. Courthouse

500 Pearl St.
New York, NY 10007

New York County District Attorney
One Hogan St.
New York, New York 10038
ATTN: EVA DOWDELL

New York Department of Law
100 Church Street
New York, New York 10007
ATTN: D. OLINER, ESQ.

Hon. Andrew L. Carter, Jr
United States District Court
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 415
New York, New York 10007

EXHIBIT

“A”

Sergeant Freyre - People - Direct

1 A. Well, originally been with transit about eight and a
2 half years, so I would say about six years.

3 Q. So you have been with transit almost your entire
4 career?

5 A. That's correct.

6 Q. How long have you been a sergeant?

7 A. I've been a sergeant now for about two years.

8 Q. And before you were a sergeant?

9 A. I was a detective in transit.

10 Q. How long have you been a detective with transit?

11 A. For four years.

12 Q. Are you familiar with an individual named Gregory Lee?

13 A. Yes.

14 Q. And can you tell the Court how you became familiar with
15 Gregory Lee?

16 A. Sure. It all started on June 10th of 2012, there was a
17 complaint report that was issued. An individual was a victim of
18 a grand larceny at 42nd Street/Eighth Avenue in the subway
19 station. After reading the report, I conducted an investigation
20 into this report, I realized that there was video available of
21 this incident. I pulled the video, I reviewed the video, and in
22 the video at the time I didn't know who Mr. Lee was. Upon
23 reviewing the video, I realized I see two individuals, Gregory
24 Lee and another individual with a hat, who we later found out
25 was Walter Young. We see him remove a wallet from an individual

Sergeant Freyre - People - Direct

1 in the train station. I rewind the tape all the way back to
2 when they entered the transit, to the turnstiles, and I get a
3 clear shot of Mr. Lee and see the mugshot. I'm sorry. When I
4 see the individual, his face, I looked through my -- I have a
5 book of known grand larceny, pickpocket recidivists. From there
6 I was able to ID Mr. Lee was the same guy on the video.

7 Q. So then what did you do?

8 A. After, once I knew who Mr. Lee was from the video and
9 from the picture, I contacted parole. I realized he was on
10 parole at the time. I spoke to his parole officer. I asked if
11 Mr. Lee shows up to parole. He said yes, he comes every time.
12 He comes in the morning around 9:00. I said no problem. To his
13 next parole visit, I set up parole, and I waited to see if
14 Mr. Lee would show up. Sure enough, he shows up with the other
15 individual that was in the video with the hat. At that time I
16 called the detective who had the actual case of Mr. Lee on that
17 incident. I told him that Mr. Lee is currently on parole. He
18 notified parole, hold on to Mr. Lee until he showed up.

19 Q. So I'd like to talk to you about October 25, 2012. As
20 the transit field intelligence officer, were you involved in the
21 arrest of Gregory Lee on that day?

22 A. Well --

23 MS. HORANT: At this time I'm going to object to
24 this line of questioning. We have had relatively testimony
25 regarding the June date, the October date, I don't believe

EXHIBIT

“B”

Received:

Jun 20 2012 05:04pm

Fax:

Jun 20 2012 04:09pm P001/001

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Page 1 of 1

THE PEOPLE OF THE STATE OF NEW YORK

- against -

1. Walter Young (M 58)
2. Gregory Lee (M 53)

ECAB #
1354635

Defendants.

FELONY *Misdemeanor*
ADA BUZA
212-335-9946

Detective Enrique Corniel, shield 1787 of the Manhattan Robbery Squad, states as follows:

On June 10, 2012, at about 18:10 hours at a subway on West 42nd Street and 8th Avenue in the County and State of New York, the Defendants committed the offenses of:

1. *155-25* PL13536(S) *Petit Larceny* Grand Larceny in the Fourth Degree
(defendant #1: 1 count)
(defendant #2: 1 count)

can't prove felony/ sent beyond reasonable doubt

OT
9-12-12

the defendants stole property from the person of another

The offenses were committed under the following circumstances:

Deponent states that he is informed by an individual known to the District Attorney's Office that informant observed the defendant Young prevent informant from getting on a train and acted as a distraction at the above address while defendant Lee picked informant's wallet from informant's pants. Deponent is further informed that informant did not know either defendants and neither defendant had permission or authority to take or possess complainant's wallet.

False statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law.

Deponent

Date and Time

EXHIBIT

“C”

Criminal Court of the City of New York

New York County

Felony Complaint

FELONY

The People of the State of New York
vs.

DEFENDANT:

CHARGES:

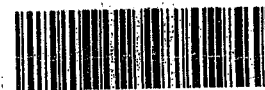
DOCKET NUMBER:

WALTER YOUNG (M 58)

PL155.30(5)

06/19/2012 15:30

2012NY048053



Interpreter: Language _____

Screener: BUZA, JOHN - TRLBURU50

Notices Served at Arraignment:

- ☒ CPL 190.50 - Grand Jury
☒ Cross Grand Jury
☐ Waive Cross Grand Jury
☐ CPL 710.30(1) (A) - Statement
☐ CPL 710.30(1) (B) - Identification
☐ CPL 250.20 - Alibi
☐ PL 450.10(48 hrs /15 days) - Property

☐ OTHER: _____

Adjournment:

Part: _____ Date: _____

JUN 25 2012

☐ CPL 180.80/30.30 Waived

Bail Condition:

\$25,000 Secured / \$25,000

☒ (Ins. Co. Bail Bond) (Cash Bail)

- ☐ Surety Exam - 48 hours/72 hours
☐ Temporary Order of Protection
☐ ART. 730 Exam Ordered
☐ Medical Attention
☐ Protective Custody
☐ Suicide Watch
☐ Psychiatric Evaluation

Arresting Officer

ENRIQUE CORNIEL

Court Reporter

DAWN M. CARR
OFFICIAL COURT REPORTER

Date

JUN 20 2012

Part

AR 3

Judge:

HON. ABRAHAM L. CLOTT

EXHIBIT

“D”

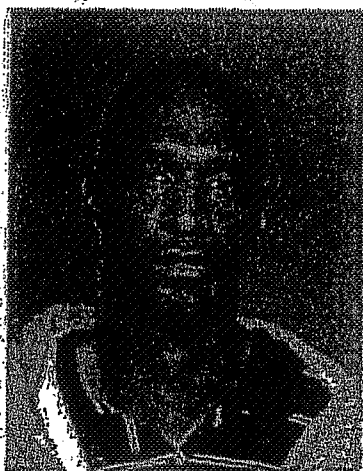
A
C



NEW YORK CITY POLICE DEPARTMENT



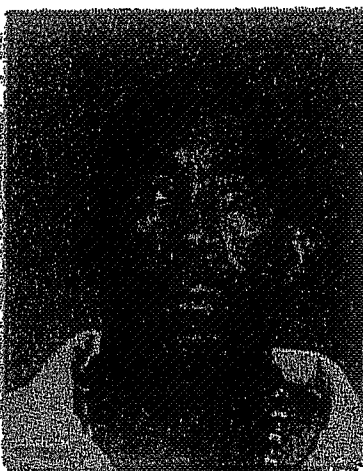
Photo Array



ARREST DATE:

ARREST ID#:

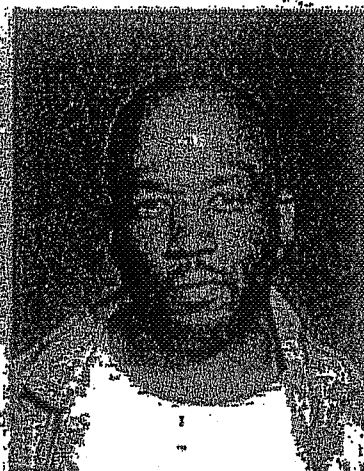
NYSID#:



ARREST DATE:

ARREST ID#:

NYSID#:



ARREST DATE:

ARREST ID#:

NYSID#:

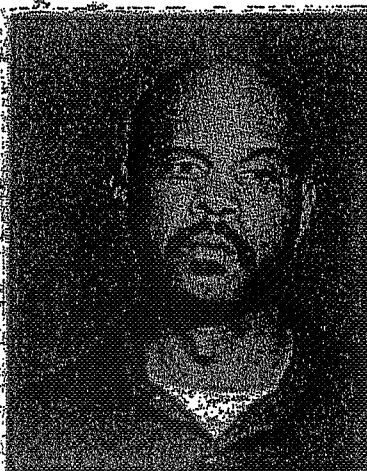


ARREST DATE:

ARREST ID#:

NYSID#:

05468639N



ARREST DATE:

ARREST ID#:

NYSID#:




ARREST DATE:

ARREST ID#:

NYSID#:


EXHIBIT

“E”

		COMPLAINT - FOLLOW UP INFORMATIONAL REPORT - Other Attachments		Crime/Condition GRAND LARCENY	Command 014-MIDTOWN PRECINCT SOUTH Date of This Report 07/11/2012
Date of UF61 08/10/2012	Date Case Assigned 08/11/2012	Complaint No. 2012-014-06344	Case No. 2012 - 636	Unit Reporting TRANSIT	Follow-Up No. 25
Complainant's Name		Address			Apt No.
Nickname/Alias/Middle Name NONE					
Sex MALE	Race WHITE	Date of Birth	Age 81		
Home Telephone	Business Telephone	Cell Phone	Beeper #	E-Mail Address	
Activity Address Location OFFICE		Street	City	State	Zip Apt #
Cross Street		Intersection of and		Premise Type	
Activity Date 08/19/2012			Activity Time 21:48		
Topic/Subject (Other Attachments) PHOTO ARRAY PREPARED					
Summary of Investigation: 1. On June 19, 2012, at approximately 2148 hrs, the u/s did prepared a Photo Array, as requested by ADA Buza, with photo of suspect Gregory Lee to show to c/v. See photo array reports attached.					
Reporting Officer	Rank DT3	Name ENRIQUE CORNIEL		Tax Reg. No.	Command 257-MANHATTAN ROBBERY SQUAD
Reviewing Supervisor	Manner of Closing	Date Reviewed 08/11/2012	Date of Next Review	Name PATRICK HAMILTON	Supv. Tax No.


EXHIBIT

“F”

		COMPLAINT - FOLLOW UP INFORMATIONAL REPORT - Other Attachments		Crime/Condition GRAND LARCENY	Command 014-MIDTOWN PRECINCT SOUTH Date of This Report 07/11/2012
Date of UF61 06/10/2012	Date Case Assigned 06/11/2012	Complaint No. 2012-014-06344	Case No. 2012 - 636	Unit Reporting TRANSIT	Follow-Up No. 27
Complainant's Name		Address			Apt No.
Nickname/Alias/Middle Name NONE					
Sex MALE	Race WHITE	Date of Birth	Age 81		
Home Telephone	Business Telephone	Cell Phone	Beeper #	E-Mail Address	
Activity Address Location NYC		Street	City	State NY	Zip Apt #
Cross Street		Intersection of		Premise Type RESIDENCE - APT. HOUSE	
Activity Date 06/19/2012		Activity Time 22:25			
Topic/Subject (Other Attachments) SHOW OF PHOTO ARRAY TO C/V					
Summary of Investigation: 1. On June 19, 2012, at approximately 2225 hrs, the u/s arrived at c/v's residence to show him the photo arrays. The u/s first read the viewing instructions to c/v and handed him the photo array in an envelope. After viewing photo array, c/v identified suspect, position #4, as the male involved in incidence in which his wallet was stolen. See attached photo array reports and photo for further details. 2. Case active.					
Reporting Officer:	Rank DT3	Name ENRIQUE CORNIEL	Tax Reg. No.	Command 257-MANHATTAN ROBBERY SQUAD	
Reviewing Supervisor:	Manner of Closing	Date Reviewed 09/16/2012	Date of Next Review	Name UNA MCGEOUGH	Supv. Tax No.



EXHIBIT

“G”

		COMPLAINT - FOLLOW UP INFORMATIONAL REPORT - Other Attachments		Crime/Condition GRAND LARCENY	Command 014-MIDTOWN PRECINCT SOUTH Date of This Report 07/11/2012
Date of UF61 06/10/2012	Date Case Assigned 06/11/2012	Complaint No. 2012-014-06344	Case No. 2012 - 636	Unit Reporting TRANSIT	Follow-Up No. 28
Complainant's Name		Address			Apt No.
Nickname/Alias/Middle Name NONE					
Sex MALE	Race WHITE	Date of Birth	Age 81		
Home Telephone	Business Telephone	Cell Phone	Beeper #	E-Mail Address	
Activity Address Location NYC		Street	City	State NY	Zip Apt #
Cross Street		Intersection of			Premise Type
Activity Date 06/19/2012		Activity Time 22:25			
Topic/Subject (Other Attachments) SHOW OF PHOTO ARRAY TO C/V					
Summary of Investigation:					
1. On June 19, 2012, at approximately 2225 hrs, the u/s arrived at c/v's residence to show him photo array prepared of suspect. C/v was not able to identify suspect from Photo Array. See photo array reports and photo attached.					
2. Case active.					
Reporting Officer:	Rank DT3	Name ENRIQUE CORNIEL		Tax Reg. No.	Command 257-MANHATTAN ROBBERY SQUAD
Reviewing Supervisor:	Manner of Closing	Date Reviewed 09/16/2012	Date of Next Review	Name UNA MCGEOUGH	Supv. Tax No.

EXHIBIT

“H”

 		COMPLAINT - FOLLOW UP INFORMATIONAL REPORT - Other Attachments		Crime/Condition GRAND LARCENY		Command 014-MIDTOWN PRECINCT SOUTH Date of This Report 07/1/2012	
Date of UF61 06/10/2012	Date Case Assigned 06/11/2012	Complaint No. 2012-014-06344	Case No. 2012 - 636	Unit Reporting TRANSIT	Follow-Up No. 30		
Complainant's Name		Address			Apt No.		
Nickname/Alias/Middle Name NONE							
Sex MALE	Race WHITE	Date of Birth		Age 81			
Home Telephone	Business Telephone	Cell Phone		Beeper #	E-Mail Address		
Activity Address Location OFFICE		Street	City	State	Zip	Apt #	
Cross Street			Intersection of and		Premise Type		
Activity Date 06/20/2012				Activity Time 16:10			
Topic/Subject: (Other Attachments) LINE UP WITH SUSPECT GREGORY LEE							
Summary of Investigation: 1. On June 20, 2012, at approximately 1610 hrs, a line up with suspect Gregory Lee was set up to be viewed by c/v. Mr Lee selected position # 2 in the line up. After viewing line up, c/v selected position #2 as the suspect involved in incidence that occurred on 06/10/2012. See line up report and photo attached.							
Reporting Officer:	Rank DT3	Name ENRIQUE CORNIEL		Tax Reg. No.	Command 257-MANHATTAN ROBBERY SQUAD		
Reviewing Supervisor:	Manner of Closing	Date Reviewed 09/16/2012	Date of Next Review	Name UNA. MCGEOUGH	Supv. Tax No.		

EXHIBIT

“I”

MALE/BLACK/53

DEF 8

LEE, GREGORY

Arrest Id	Arrest Date	NYSID	Defendant	AO NAME	Arrest Id	Arrest Date	NYSID	Defendant	AO NAME
1026	06/20/2012	579	SGT	LAWSON					
1131	06/20/2012	579	SGT	MIRKIN					
1737	06/20/2012	579	PA	WILLIAMS					
1854	06/20/2012	579	SGT	SMITH					

Note
CASE WILL BE DELAYED TO CONDUCT LINEUP AS PER ADA BUZA AO CALL BACK [REDACTED]
DEPT IS EN ROUTE TO MAN ROB SQ. [REDACTED] WITH DET CORNIEL FOR LINEUP.
WAITING FOR ADA OFFICE TO SCAN TO ENRANGMENT

LEE, GREGORY

Page 2

EXHIBIT

“J”

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

CERTIFICATE OF DISPOSITION
NUMBER: 334409

THE PEOPLE OF THE STATE OF NEW YORK
VS

LEE, GREGORY
Defendant

[REDACTED]
Date of Birth

[REDACTED]
Address

[REDACTED]
NYSID Number

BRONX NY
City State Zip

06/19/2012
Date of Arrest/Issue

Docket Number: 2012NY048053

Summons No:

155.30
Arraignment Charges

Case Disposition Information:

Date Court Action
12/18/2012 DISMISSED AND SEALED

Judge
WHITEN, M

Part
B

NO FEE CERTIFICATION

☐ GOVERNMENT AGENCY ☐ COUNSEL ASSIGNED

☐ NO RECORD OF ATTORNEY READILY AVAILABLE. DEFENDANT STATES COUNSEL WAS ASSIGNED

SOURCE ☐ ACCUSATORY INSTRUMENT ☐ DOCKET BOOK/CRIMS ☐ CRC3030 [CRS963]

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN
THIS COURT.

ORR, B
COURT OFFICIAL SIGNATURE AND SEAL

09/25/2013
DATE

FEE: NONE

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT
SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

SEALED

pursuant to Section 160.50 of the CPL

EXHIBIT

“K”

RECORD OF COURT ACTION

Date	Court Action	Adj. Request	Present	Absent	Notify	Excused
6.25.12	NO G.J.A. XGJ or PT F 9-12-12 have 2nd call ROR-C (180-80) Tisch	People Defense Consent Court	Officer Complainant Defendant Attorney	Officer Complainant Defendant Attorney	Officer Complainant Defendant Attorney	Officer Complainant
Part	F	Reason for Adjournment 9-12-12 F BSA				
Reporter	PART F JUNE 25 2012 RET JAMES JUDGE TISCH	SPEEDY TRIAL ____ Adjournment period to be excluded under 30.30 CPL ____ Adjournment period to be charged under 30.30 CPL ____ The defendant, being without counsel, consents to this adjournment after having been advised of his rights under the Speedy Trial Rules and the effect of his consent. ____ The defendant, upon being released on his own recognition, was directed by the Court pursuant to Sec. 510.40 of the CPL.				
Judge	Tisch	Bail Condition				

Date	Court Action	Adj. Request	Present	Absent	Notify	Excused
12.12.2012	NO G.J.A. TI-PTC HIS PC	People Defense Consent Court	Officer Complainant Defendant Attorney	Officer Complainant Defendant Attorney	Officer Complainant Defendant Attorney	Officer Complainant
Part	12.12.2012 RET JAMES JUDGE TISCH	Reason for Adjournment 10-24-12 B S/D				
Reporter	PART SEP RET JAMES JUDGE TISCH	SPEEDY TRIAL ____ Adjournment period to be excluded under 30.30 CPL ____ Adjournment period to be charged under 30.30 CPL ____ The defendant, being without counsel, consents to this adjournment after having been advised of his rights under the Speedy Trial Rules and the effect of his consent. ____ The defendant, upon being released on his own recognition, was directed by the Court pursuant to Sec. 510.40 of the CPL.				
Judge	PC	Bail Condition				

Date	Court Action	Adj. Request	Present	Absent	Notify	Excused
10-24-12	NO G.J.A. PTC 79 NO SD W	People Defense Consent Court	Officer Complainant Defendant Attorney	Officer Complainant Defendant Attorney	Officer Complainant Defendant Attorney	Officer Complainant
Part	10-24-12 RET JAMES JUDGE TISCH	Reason for Adjournment B 12-18-12 SD				
Reporter	PART SEP RET JAMES JUDGE TISCH	SPEEDY TRIAL ____ Adjournment period to be excluded under 30.30 CPL ____ Adjournment period to be charged under 30.30 CPL ____ The defendant, being without counsel, consents to this adjournment after having been advised of his rights under the Speedy Trial Rules and the effect of his consent. ____ The defendant, upon being released on his own recognition, was directed by the Court pursuant to Sec. 510.40 of the CPL.				
Judge	W	Bail Condition				

Date	Court Action	Adj. Request	Present	Absent	Notify	Excused
	NO G.J.A. PTC 79 NO SD W	People Defense	Officer Complainant	Officer Complainant	Officer Complainant	Officer Complainant

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF JEFFERSON)

Mr. Gregory Lee , being duly sworn deposes and says:

That on this day I submitted in a United State Postal Service mailbox maintained at the Cape Vincent Correctional Facility, the original, or copies of the following papers:

Plaintiff's Notice of Amended Complaint, Second Amended Complaint F.R.C.P. Rule 15(a)(1) (13 Civ. 8359)(ALC)(DCF)
To be mailed via United States Postal Service to the Pro-Se Clerk to be served electronically to the parties listed below:

Dated: Cape Vincent , NY

April 27, 2015

District Attorney
New York County
One Hogan Street
New York, NY 10013
ATTN: Eva Dowdell, Esq.

New York Department of Law
100 Church St.
New York, New York 10007
ATTN: D. Oliner, Esq.



Mr. Gregory Lee, Pro-Se
#13R2382
Cape Vincent Corr. Facility
Route 12E, P.O. Box 739
Cape Vincent, NY 13618

U.S. District Court
U.S. Magistrate Debra Freeman
U.S. Courthouse
500 Pearl Street
New York, NY 10007

Sworn to before me this

27 day of April, 2015



NOTARY PUBLIC

BARBARA M. COTTER
Notary Public, State of New York
Qualified in Jefferson County
01CO6168168
Commission Expires on June 11, 2015

Mr. Gregory Lee #13R2382
Cape Vincent Correctional Facility
Route 12E, P.O. Box 739
Cape Vincent, NY 13618
April 27, 2015

United States District Court
Southern District of New York
Daniel Patrick Moynihan
U.S. Courthouse
500 Pearl Street
New York, New York 10007
Attn: Clerk, Pro-Se Unit

RECEIVED
SDNY PRO SE OFFICE
2015 MAY -1 P 3:20

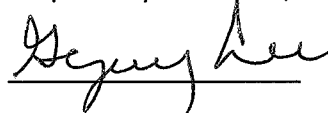
RE: Gregory Lee v. Det. Enrique Corneil, et al.
13 Civ. 8359 (ALC)(DCF)

Dear Sir:

The purpose of this correspondence is to request that this Notice and Second Amended Complaint, submitted pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure, be transmitted to the following parties listed on the document affidavit. If it is possible I'd like to request that these documents be served electronically.

I do Thank You in advance for your assistance in this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gregory Lee", written over a horizontal line.

Mr. Gregory Lee – Pro Se

Mr. Gregory Lee #13R2382
Cape Vincent Correctional Facility
Route 12E, P.O. Box 739
Cape Vincent, NY 13618

Cape Vincent
Correctional Facility



U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Pro-Se Clerk
U.S. Courthouse
500 Pearl Street
New York, New York 10007

RECEIVED
SDNY PRO SE OFFICE
2015 MAY -1 P 3:19

RECEIVED
SDNY PRO SE OFFICE
2015 MAY -1 P 3:19

LEGAL MAIL